PUBLIC PROSECUTOR v. VOON TEIK YONG

[A.Cr.J. (Ismail Khan J.) February 18, 1963]

[Seremban — Criminal Appeal No. 16 of 1962]

Road Traffic — Notice of intended prosecution — Road Traffic Ordinance, 1958, ss.36(1) and 56.

Evidence — Notice to produce — When dispensed with Evidence Ordinance, 1950, s.66.

Penal Code, s.304A — Rash and negligent act.

The respondent was charged under section 304A of the Penal Code. At the close of the prosecution case, defence counsel submitted that there was no case to answer and also that there was no evidence of notice of intended prosecution to warrant an amendment of the charge to one under the Road Traffic Ordinance, 1958. A police officer was then recalled and gave evidence that a notice had been served and produced a copy of it. The notice stated that it was a notice of intended prosecution for any offence. The learned President held that the notice was invalid and acquitted the respondent. The Public Prosecutor appealed.

Held: (1) the defence is entitled to raise the issue of the notice at any stage of the proceedings;

(2) section 56 of the Road Traffic Ordinance imposes no obligation on the prosecution to explain the contents of a notice of intended prosecution to the defendant;

(3) it is not necessary for the prosecution to produce the original notice of intended prosecution in order to prove that it was served.

Case referred to:—

(1) *R.* v. *Edmonton Justices, Ex parte Brooks* [1960] 2 All E.R. 475.

MAGISTRATE'S CRIMINAL APPEAL.

Mohd. Salleh bin Abbas (Deputy Public Prosecutor) for the appellant.

Thean Lip Ping for the respondent.

Ismail Khan J.: The respondent was charged as follows:—

"That you on 9.4.61 at about 11.00 p.m. at 6th milestone Tampin-Seremban Road, Kota, in the District of Rembau, in the State of Negri Sembilan, caused the death of one Chan Sai Soo by doing a negligent act not amounting to culpable homicide, to wit, by driving M/Lorry No. A.9386 in a rash manner by driving your M/Lorry into the oncoming M/Car No. BF. 6284, and thereby committed an offence punishable under section 304A of the Penal Code."

The driver of the motor car, Hing Hong Hing, said that on 9th April, 1961, he left Johore Bahru at 7.00 p.m. for Kuala Lumpur with two passengers. At 11.00 p.m. at the 6th milestone Tampin-Seremban Road he saw the headlights of an oncoming vehicle, a lorry. He was then on his correct side of the road and drove his car towards a drain to avoid the lorry but was unable to prevent a collision. One of the passengers died as a result of such collision.

After several witnesses, including some police officers, had given evidence, the prosecution closed its case. Counsel for the defence then submitted that there was no evidence to support a charge under section 304A of the Penal Code. He further submitted that there was no evidence of notice of intended prosecution to warrant an amendment of the charge to one under the Road Traffic Ordinance, 1958.

There is nothing to preclude the defence from raising the issue as to notice at this stage. As Lord Parker C.J. said in the case of *R.* v. *Edmonton Justices, Ex parte Brooks* [1]:—

"I think that it is a very convenient practice that in these cases defendants should be asked whether any issue is going to be raised in regard to notice of intended prosecution, because if the issue is to be raised, it is clearly convenient to dispose of that issue at once without having to go into all the facts. But, although that is a very convenient practice, I can see no ground on which one can prevent a defendant raising the matter at any stage of the proceedings."

One of the police officers, Inspector Abdul Rahman was then recalled and gave evidence that he had served the respondent with a notice of intended prosecution under section 56 of the Road Traffic Ordinance. He produced a copy of the notice P5 which reads as follows:—

"To: Voon Teik Yong,
No. 43 Canal Road,
Teluk Anson,
Perak.

Sir/Madam,

Notice of Intended Prosecution

Under the provisions of section 56 of the Road Traffic Ordinance (No. 49 of 1958) I am required to inform you within 14 days from the date of the commission of the offence referred to below that it is intended to institute Court proceeding against you for the following offence(s) under the Road Traffic Ordinance (No. 49 of 1958):—

(a) deleted
(b) deleted
(c) An offence under section 36 for INCONSIDERATE OR CARELESS DRIVING

committed on 10.4.61 (date) at about 12.10 a.m. at 25 milestone Seremban-Tampin Road (place) Kota.

I am, Sir/Madam,
Your obedient servant,
Signature: Abdul Rahman
Designation: Pegawai Yang Menjaga Daerah Polis
Tampin, N.S."

He also added that he told the respondent it was a notice of intended prosecution for any offence.

The learned President however agreed with the submissions of defence counsel and acquitted and discharged the respondent. Against this acquittal the Public Prosecutor has appealed on the ground that there was evidence that section 56 of the Road Traffic Ordinance had been complied with and that the charge should have been amended to one under section 36(1) of the Ordinance. In his grounds of judgment the learned President said:—

"I refused to exercise my discretion to amend the charge to one under the Road Traffic Ordinance because in my opinion the service of the notice under section 56 of the Ordinance was bad in this case. This is due to the fact that according to the I.O. in his XXD, he told the accused 'This is a notice of intended prosecution for *any* offence'."

Section 56 of the Road Traffic Ordinance reads:—

"Where a person is prosecuted for an offence under section 35 or section 36 or any of the provisions of this Part of this Ordinance relating to the maximum speed at which motor vehicles may be driven, he shall not be convicted unless within fourteen days of the commission of the offence—

(a) a summons for the offence was served on him; or
(b) a notice in writing of the intended prosecution, specifying the nature of the alleged offence and

the time and place where it is alleged to have been committed, was served on or sent by registered post to him or the person registered as the owner of the vehicle at the time of the commission of the offence:

Provided that —

(i) .....

(ii) the requirements of this section shall in every case be deemed to have been complied with unless and until the contrary is proved."

In this case there is the evidence of Inspector Abdul Rahman that he had effected service of the notice of intended prosecution on the respondent. There was therefore a compliance with one of the two requirements under section 56, viz. service of the notice on the respondent. The learned President however took the view that the notice was invalidated by the Inspector informing the respondent that it was a notice of prosecution for "any offence". In this he was wrong as, to my mind, what the Inspector told the respondent is irrelevant. Section 56 speaks only of the service of the notice of intended prosecution, not of any obligation to explain the contents of the notice to the respondent.

It was argued by counsel for the respondent that P5 which was only a copy of the notice was inadmissible in evidence because of the failure to comply with section 66 of the Evidence Ordinance, as no notice had been given to the respondent to produce the original. In my opinion, this is a case where such notice to produce could be dispensed with. All that was necessary was for the prosecution to establish service of notice on the respondent of intended prosecution for an offence indicated in P5. The onus would then be on the defence to prove that the requirement of section 56 had not been complied with.

The appeal is allowed, the order of acquittal set aside and the case is remitted to the Sessions Court for the President to deal with it according to law.

Appeal allowed.

Solicitors: *Shook Lin & Bok.*

TEE CHIN YONG v. ERNEST JEFF

[O.C.J. (Ismail Khan J.) February 18, 1963]

[Seremban — Civil Suit No. 45 of 1962]

Land law — Agreement for sale of portion of land — Specific performance — Whether purchaser has caveatable interest — Whether portion of land caveatable.

The plaintiff lodged caveats against a certain portion of two pieces of land owned by the defendant in which he claimed to have an interest by virtue of an agreement for sale. The Registrar of Titles served a notice on the plaintiff requiring him to withdraw the caveats within 21 days and that after the lapse of such time the caveats would be removed and their discharge recorded.

The plaintiff applied for an order to extend the caveats until the disposal of a suit for specific performance on the agreement for sale.

Held: (1) a person claiming an interest in a specific portion of a piece of land is not entitled to lodge a caveat over the whole of the land;

(2) therefore, the caveats being partially invalid, such invalidity rendered those caveats wholly null and void and of no effect.

Cases referred to:—

(1) *Chin Cheng Hong* v. *Hameed & Ors.* [1954] M.L.J. 169.

(2) *Haji Abdul Rahman* v. *Mohamed Hassan* [1917] A.C. 209; F.M.S.L.R.

(3) *In re Registration of Caveat* (1908) Innes 114.

SUMMONS - IN - CHAMBERS adjourned into Open Court.

G. T. S. Sidhu for the plaintiff.

N. A. Marjoribanks for the defendant.

Ismail Khan J.: This is a Summons-in-Chambers which has been adjourned into Open Court for argument. The plaintiff is suing the defendant for specific performance of an agreement for the sale to him of a portion of the land comprised in Certificate of Title No. 1205 (now 5612) and Certificate of Title No. 1380 (now 5613), Seremban Town, District of Seremban, Negri Sembilan, registered in the name of the defendant. The plaintiff had lodged a caveat against each of the lands claiming an interest in them by virtue of the said agreement. On the 11th day of January, 1963, the plaintiff was served with a notice requiring that the caveats be withdrawn within twenty-one days and stating that after the lapse of the twenty-one days the Registrar of Titles would remove the said caveats and record their discharge unless he should have been previously served with an Order of Court extending the time.

The plaintiff's application is for an order that the caveats be extended until the disposal of the suit. The relevant section of the Land Code is section 166 which reads:—

"The grantor of any instrument of trust or a beneficiary or a guardian or next friend of any minor beneficiary or a trustee or any person claiming title to or registrable interest in land may present a caveat to the effect that such land shall not be transferred, charged or leased by the proprietor either:

(a) absolutely, or

(b) except in such manner and to such extent as in such caveat may be expressed, or

(c) until notice shall have been served on the caveator, or

(d) unless the transfer, charge, or lease be expressed to be subject to the claim of the caveator as expressed in such caveat, or

(e) except subject to any conditions expressed in such caveat."

Mr. Marjoribanks for the defendant submitted that the plaintiff had no registrable interest in the lands and that he could not therefore present any caveats. In support of these submissions he referred me to two cases, both unreported, viz.: (1) Selangor Originating Summons No. 140 of 1954 — *Official Assignee* v. *Madam Chan Kam Lin;* (2) Penang Civil Suit No. 192 of 1959 (S.C. 74/59) — *Gan Eng Boon* v. *Johore Farms and Plantations Ltd.*

In the first case it was held by Wilson J. that an agreement for sale of land did not give the purchaser any registrable interest in the land